

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL

75-1270

United States Court of Appeals

For the Second Circuit.

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

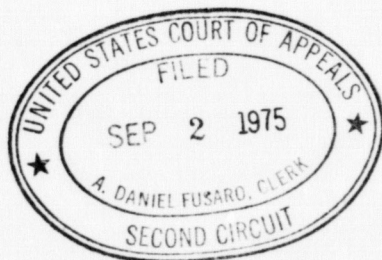
-against-

ERNEST OLSEN,

Defendant-Appellant.

*On Appeal From The United States District
Court For The Eastern District of New York*

Appellant's Appendix



IRVING KATCHER
Attorney for Defendant-Appellant
38 Park Row
New York, N.Y. 10038
(212) 227-0073

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10-9-74	Before Costantino J - Indictment filed - ordered sealed by the Court. Bench Warrants Ordered for all defts.
10/15/74	Bench warrants issued
11-20-74	Before WEINSTEIN J - case called - Deft George Sun & counsel Legal Aid present - Lauro Ho sworn as interpreter - sealed indictment ordered opened - Simon Chrein of Legal Aid assigned as counsel for deft SUN. Deft arraigned and enters a plea of not guilty - clerk to assign this case to a Judge of this Court. Bail \$10,000.
1-20-74	Before MISHLER, CH J - case called - deft GIT produced in court on a Bench Warrant without counsel - Interpreter Lawn Ho present - deft arraigned and the court enters a plea of not guilty in his behalf - court, to appoint counsel for the deft. Bail set at \$25,000 P/R Bond signed by the wife and son and secured by the

PROCEEDINGS

equity of 2 houses.

11-20-74 Before MISHLER, CH J - case called - deft JEAN LIU produced in court on a bench warrant without counsel - deft arraigned and the court enters a plea of not guilty on behalf - court to appoint counsel for the deft. Bail set at \$25,000 P/R Bond.

1/22/74 Before MISHLER, CH.J.- Case called- Oral motion argued for bail reduction as to deft GEORGE SUN- Bail modified to a \$10,000.00 P/R? Bond

1/26/74 Petition for writ of habeas corpus ad prosequendum filed (BENNY FONG)

1/26/74 By MISHLER, CH.J.- Writ issued, ret. 12/5/74 (BENNY FONG)

1-27-74 Petition for Writ of Habeas Corpus ad prosequendum filed (LEE LOUIE)

11-27-74 By MISHLER, CH J - Writ Issued, ret. Nov. 27, 1974) " "

11/27/74 Befpre MISHLER, CH.J.- Case called- Deft LEE LOUIE brought into court on writ- Interpreter sworn- Deft arraigned and waives reading of the indictment and enters a plea of not guilty- deft in custody and case adjd without date

1/27/74 Notice of appearance filed (LEE LOUIE)

2/3/74 Writ retd and filed- executed (LEE LOUIE)

12/5/74 Before MISHLER, CH.J.- Case called- Deft BENNY FONG present without counsel. Court too appoint counsel for the deft- deft arraigned and enters a plea of not guilty on behalf of the deft- Bailset at \$5,000 Surety Bond

12-6-74 Magistrate's files 74 M 1637, 1638 and 1653 inserted into CR file.

12/20/74 Petition for writ of habeas corpus ad prosequendum filed (OLSEN)

2/20/74 By MISHLER, CH.J.- Writ issued, ret. 12/26/74

2/26/74 Before MISHLER, CH.J.- Case called- Deft OLSEN and counsel present- Deft arraigned and enters a plea of not guilty- Bail set \$300.00 surety Bond Trial set for 3/21/75

2/26/74 By MISHLER, CH.J.- Order appointing counsel filed (OLSEN)

2/27/74 By MISHLER, CH.J.- Order appointing counsel filed (BENNY FONG)

2/30/74 Writ retd and filed- executed (OLSEN)

1/2/75 By MISHLER, CH.J.- Certificate of Engagement filed

1-20-75 Certificate of Engagement filed to counsel setting case originally scheduled for trial Mar. 31, 1975 has been adjd to April 7, 1975. Previous Certificate of Engagment dated Dec. 31, 1974 is null and void.

2/13/75 Magistrate's file 74 M 1724 inserted into CR file.

2-26-75 Govts Notice of Readiness for Trial filed (OLSEN & BENNY FONG)

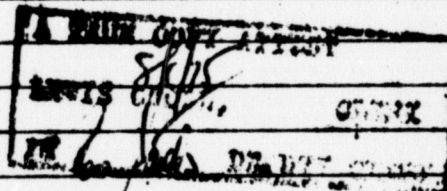
1-26-75 Govts Notice of Readiness for Trial filed (GEORGE SUN, LEE LOUIE, JEAN LIU and TAM WING GIT.)

3-13-75 Before Mishler, Ch J - case called - deft FONG & counsel Sara Halbert

DATE	PROCEEDINGS
	present - motion by deft for dismissal of the indictment as indicated on the record is granted as to deft Fong - with the consent of the Govt.
13-75	By MISHLER, CH J - Order of dismissal filed (Fong)
18-75	Writ returned and filed - executed (Fong)
24-75	Voucher for compensation of counsel filed (Fong)
27-75	Petition for Writ of Habeas Corpus Ad Prosequendum filed (Olsen)
27-75	By PLATT, J - Writ issued, ret. 4-2-75.
7-75	Before MISHLER, CH J - case called - deft Olsen & counsel present - deft Liu severed from the trial - trial ordered & BEGUN - Interpreter present - Jurors selected and sworn - trial contd to 4-8-75.
8-75	By MISHLER, CH J - Order filed that the contents of this Order and affidavit be sealed and not made available until further order of this court.
8/75	Before MISHLER, CH.J.- Case called- Deft OLSEN present with counsel- Trial resumed - Interpreter present- Trial contd to 4/9/75 at 10:00 A.M.
-9-75	Before MISHLER, CH J - case called - deft Olsen present with counsel Irving Katcher - trial resumed - Interpreter Mr. Hesselund-Jensen present - motion by deft for judgment of acquittal is denied - deft rests - trial contd to 4-10-75 @ 9:30 am.
1/75	Before MISHLER, CH.J.- Case called- Deft OLSEN and counsel present- Interpreter present- Trial resumed- Jury charged- Marshals sworn-Jury retires to deliberate- Jury returns and renders a verdict of guilty on counts 1,2,3- Jury polled- Jury discharged- Trial concluded-All motions reserved until time of sentence-sentence adjd without date(ERNEST OLSEN)
10/75	By MISHLER, CH.J.- Order of sustenance filed
11-75	Voucher for compensation of expert services filed (Olsen)
1/16/75	Stenographers Transcripts dated 4/8/75, 4/9/75 and 4/10/75
16/75	Before MISHLER, CH. J. - Case called- Deft GIT and SUN present with counsel On motion of A.U.S.A. Clayman the indictment is dismissed- as to deft GIT and SUN Sentence as to deft Olsen adjd to 6/6/75 on consent
6/75	By MISHLER, CH.J.- Orders (2) of dismissal filed (TAM WING GIT a/k/a and GEORGE SUN)
-6-75	Before MISHLER, CH J - case called - sentence adjd to 6-20-75 on consent (Olsen)
1/20/75	Before MISHLER, CH.J.- Case called- Deft OLSEN and counsel present- Interpreter present-sentence adjd to 7/11/75 on consent

PROCEEDINGS

/11/75 Before MISHLER, CH.J.- Case called- Deft OLSEN's motion to vacate denied-motion to dismiss counts 2 and 3 are denied-deft sentence term of imprisonment for a period of 5 years on each of counts 1 said terms to run concurrently Clerk to file notice of appeal
7/11/75 Judgment and Commitment filed- certified copies to Marshal
7/11/75 Notice of appeal without fee filed(OLSEN)
7/11/75 Docket entries and duplicate of notice of appeal mailed to ^{copy} appeals
7/15/75 Certified copy of Judgment and Commitment ret'd and filed- copies Federal Detention Headquarters(OLSEN)
7-31-75 Order received from the Court of Appeals that the Index to ~~the~~ be docketed on or before August 4, 1975 (Olsen)



A5

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. NY

0019-1974

TIME AM.....
P.M.....

UNITED STATES OF AMERICA

against -

Cr.No. 74 CR 627

(T. 21, U.S.C. §§173 and 174
and T. 18, U.S.C. §2)

LUI NGAU,
WONG SUM YI,
PER BUUS HANSEN,
GEORGE SUN,
CHENG KAM CHEUNG,
YEUNG TAK,
ERNST OLSEN,
LENNART BO HOLMGREN,
KJELD V. KROGH,
WONG YIU CHEUNG,
TUNG YAU SANG,
LEE LOUIE
JEAN LIU,
TAM WING GIT, A/K/A "Hom Wing Git"
and BENNY FONG,

Defendants.

THE GRAND JURY CHARGES:

COUNT ONE

On or about and between the 1st day of January 1969,
and the 30th day of June 1970, both dates being approximate and
inclusive, within the Eastern District of New York and elsewhere,
LUI NGAU, WONG SUM YI, PER BUUS HANSEN, GEORGE SUN, CHENG KAM
CHEUNG, YEUNG TAK, ERNST OLSEN, LENNART BO HOLMGREN, KJELD V.
KROGH, WONG YIU CHEUNG, TUNG YAU SANG, LEE LOUIE, JEAN LIU, TAM
WING GIT, also known as "Hom Wing Git" and BENNY FONG, the defendants,
together with Cheung Keng Fai, Ngau Sau Tung, Wong Shing Kong, Kin
San Lam and George Wong, named herein as co-conspirators but not
as defendants, and others known and unknown to the Grand Jury,
wilfully, knowingly and unlawfully did combine, conspire, confederate
and agree together and with each other to violate Sections 173 and
174 of Title 21, United States Code.

1. It was part of said conspiracy that the defendants
and co-conspirators fraudulently and knowingly would import and
bring into the United States large quantities of heroin and opium.

narcotic drugs, contrary to law.

2. It was further a part of said conspiracy that the defendants and co-conspirators unlawfully, wilfully and knowingly would receive, conceal, buy, sell and facilitate the transportation, concealment and sale of large quantities of heroin and opium, narcotic drugs, after the narcotic drugs had been imported and brought into the United States, knowing the same to have been imported and brought into the United States contrary to law.

3. It was further a part of said conspiracy that the defendants and co-conspirators would conceal the existence of the conspiracy and would take steps designed to prevent disclosure of their activities.

In furtherance of the conspiracy and to effect the objects thereof, the following overt acts were committed within the Eastern District of New York and elsewhere:

O V E R T A C T S

1. In or about January 1969, the defendants LUI NGAU and WONG SUM YI, met with co-conspirator Wong Shing Kong in Singapore.

2. In or about March 1969, the defendant PER BUUS HANSEN removed approximately five (5) kilograms of opium from the M. S. Nicoline in Brooklyn, New York.

3. In or about March 1969, the defendant CHENG KAM CHEUNG received approximately five (5) kilograms of opium in Brooklyn, New York.

4. In or about August 1969, the defendant YEUNG TAK met with co-conspirators Wong Shing Kong and Cheung Keng Fai in Hong Kong.

5. In or about November 1969, the defendant ERNST OLSEN carried approximately two (2) kilograms of heroin aboard the M.S. Lexa Maersk in Manila, Philippines.

6. In or about January 1970, the defendant ERNST OLSEN sent a cable to the defendant GEORGE SUM in Brooklyn, New York.

A7

7. In or about January 1970, the defendant ERNST OLSEN, LENNART BO HOLMGREN and KJELD V. KROGH, removed approximately five (5) kilograms of heroin and ten (10) kilograms of opium from the U. S. S. S. "Morsk" in Brooklyn, New York.

8. In or about January 1970, the defendant LEE LOUIE met with the co-conspirators Wong Shing Kong and Kin Sang Lam in New York, New York.

9. In or about February 1970, the defendant JEAN LIU received approximately three (3) kilograms of opium in New York, New York.

10. In or about February 1970, the defendant TAM WING GIT, also known as "Hom Wing Git" received approximately three (3) kilograms of opium in Brooklyn, New York.

11. In or about February 1970, the defendant TUNG YAU SANG received approximately two (2) kilograms of opium and one (1) kilogram of heroin in New York, New York.

12. In or about April 1970, the defendant WONG YIU CHEUNG delivered approximately one (1) kilogram of heroin to co-conspirator George Wong in New York, New York.

13. On or about June 2, 1970, the defendant BENNY FONG sold approximately one-half (1/2) kilogram of heroin in New York, New York.

COUNT TWO

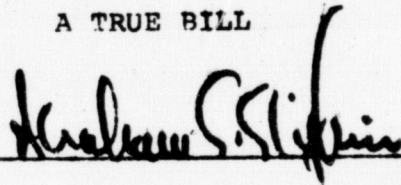
In or about January 1970, within the Eastern District of New York, the defendants LUI NGAU, WONG SUM YI, PER BUUS HANSEN, GEORGE SUN, CHENG KAM CHEUNG, YEUNG TAK, ERNST OLSEN, LENNART BO HOLMGREN, KJELD V. KROGH, WONG YIU CHEUNG, TUNG YAU SANG, LEE LOUIE, JEAN LIU, TAM WING GIT, also known as "Hom Wing Git" and BENNY FONG, fraudulently and knowingly did import and bring into the United States approximately five (5) kilograms of heroin, a narcotic drug, contrary to law. (Title 21, United States Code, Sections 173 and 174 and Title 18, United States Code, Section 2).

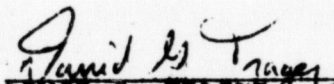
A8

COUNT THREE

In or about January 1970, within the Eastern District of New York, the defendants IUI NGAU, WONG SUM YI, PER BUUS HANSEN, GEORGE SUN, CHEUNG KAM CHEUNG, YEUNG TAK, ERNST OLSEN, LENNART BO HOLMGREN, KJELD V. FROGH, WONG YIU CHEUNG, TUNG YAU SANG, LEE LOUIE, JUAN LIU, TAM WING GIT, also known as "Hom Wing Git" and BENNY FONG, fraudulently and knowingly did import and bring into the United States approximately ten (10) kilograms of opium, a narcotic drug, contrary to law. (Title 21, United States Code, Sections 173 and 174 and Title 18, United States Code, Section 2).

A TRUE BILL


FOREMAN


DAVID G. TRAGER
United States Attorney
Eastern District of New York

1 (After recess:)

2 (Jury entered jury box at 10:45 A.M.)

3 CHARGE OF THE COURT:

4 THE COURT: Mr. Foreman and ladies and
5 gentlemen of the jury:

6 We have reached that point in the trial
7 where it becomes my duty to charge you on the
8 applicable law. I think a good starting place
9 would be to give you some understanding of what
10 each participant in a trial is obliged to do.

11 First, we have the lawyers, and they repre-
12 sent clients.

13 They are involved in their client's position
14 and point of view, and they are adversaries. That
15 means that they compete with each other over
16 contested issues of fact. One takes one position
17 and the other, the other position.

18 The theory is that when two lawyers of
19 comparable ability compete, are contestants over
20 a matter, the evidence in the case will develop
21 for the jury to see.

22 Now, the lawyers are partial and that is
23 the way it should be, because they are interested
24 in the rights of their respective clients, and
25 they are there to further the rights of the

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1 clients; Mr. Clayman on behalf of the Government,
2 and Mr. Katcher on behalf of Mr. Olsen. As between
3 the two, they are treated equally.

4 Mr. Clayman and the Government have no
5 special place in this court because it is the
6 United States of America. He stands on an equal
7 footing with Mr. Katcher and the United States of
8 America stands on equal footing with Mr. Olsen and
9 that is the way it should be -- no favorites here.

10 There are certain obligations placed upon the
11 Government and they must fulfill them.

12 The jury is described as the judges or
13 arbiters of the facts. The jury and only the jury
14 decides what happened here. The Court is the sole
15 judge of the law. I made my determinations and
16 rulings throughout the trial as a matter of law, and
17 you, as jurors, must view the evidence objectively,
18 dispassionately and solely with a view toward
19 doing justice in the case.

20 You can only do justice in the case and be fair
21 if you are ready to do so, if you want to do so and,
22 that is your obligation.

23 Sift through the evidence and make your
24 determinations. Just as I make my determinations on
25 matters of law, you make your determinations on

1
2 questions of fact. Then, determining what happened,
3 you apply the law as I charge it.

4 Now, I accept your finding as I must, and
5 you must accept my charge, even though you disagree
6 with it, even though it may be distasteful to you.

7 I charge the law as I find it and as I
8 believe it to be, and you must accept it as I charge
9 it and that makes for uniformity and predictability.

10 If each jury or each juror decided that he
11 or she would make his or her own law for each case,
12 we would have chaos. It is only fair that everyone
13 should be judged by the same law.

14 The first principle has been enunciated by
15 defense counsel, and that is that the defendant,
16 Ernst Olsen, is presumed to be innocent. That
17 means that you must conclude at the outset of the
18 trial that Mr. Olsen is innocent of all the charges
19 in this indictment. That presumption, that conclusion,
20 remains with the defendant throughout the trial and
21 throughout your deliberations and is enough to
22 acquit the defendant.

23 The Government has the burden of proving the
24 guilt of the defendant as to each crime charged,
25 by proof beyond a reasonable doubt and only then

1
2 does the presumption of innocence give way, only
3 then is it overcome.

4 If the Government fails in sustaining its
5 burden of proof, then you must find the defendant
6 not guilty.

7 I find that a reference to what we call a
8 Scotch verdict is helpful. You have heard the
9 term, "Oh, it was a Scotch verdict."

10 In Scotland, they have three verdicts;
11 "Guilty, Not Guilty" and "Not Proved."

12 In this country we have only two; "Guilty"
13 and "Not Guilty" and "Not Proved" is included in
14 "Not Guilty."

15 So, your real function here is to determine
16 whether the Government has sustained its burden
17 of proof, and you are not to speculate on whether the
18 defendant did it or didn't do it.

19 Now, a reasonable doubt is a doubt which
20 a reasonable person would have after weighing all the
21 evidence in the case. A reasonable doubt is a doubt
22 based on reason and common sense and the state of
23 the record, which means the evidence as distinguished
24 from speculation, surmise or as distinguished from
25 some emotional doubt you might have, such as a

1
2 doubt that might arise from the unpleasantness of
3 the duty of finding a defendant guilty.

4 A reasonable doubt is not a vague,
5 speculative or imaginative doubt. A reasonable
6 doubt is the kind of doubt that would make a
7 reasonable person hesitate to act in the most
8 important of his or her own affairs.

9 Proof beyond a reasonable doubt is
10 therefore proof of such convincing character that
11 you would be willing to rely and act upon it
12 unhesitatingly in the most important and weighty of
13 your own affairs.

14 The Government's burden is not to prove the
15 guilty of the defendant beyond all possible doubt.
16 There is a qualifying adjective -- "beyond a
17 reasonable doubt."

18 The Government's burden is not to prove that
19 every bit of evidence offered before you is true
20 beyond a reasonable doubt.

21 The Government's burden is to prove all the
22 essential elements of the crime charged beyond a
23 reasonable doubt.

24 In other words, I will tell you that the
25 various parts of the crime are the essential elements

1
2 constituting the whole crime, and you must find
3 that the Government proved all those essential
4 elements by proof beyond a reasonable doubt.

5 A reasonable doubt may arise from the failure
6 of the Government to produce evidence.

7 The defendant does not have to prove his
8 innocence. The defendant is not obliged to
9 offer any evidence.

10 As I indicated, the defendant may rely on the
11 failure of the Government to prove the guilt of the
12 defendant beyond a reasonable doubt.

13 Evidence is a method that the law uses to
14 prove or disprove a disputed fact. There are
15 two general classifications of evidence; one is
16 direct evidence and the other is indirect or
17 circumstantial evidence.

18 Direct evidence is the testimony of a
19 witness as to what that witness saw or heard.

20 Circumstantial evidence is a method of
21 proving a disputed fact used by the jury employing
22 their good common sense and experience in drawing
23 a conclusion and inference from all the circumstances
24 that have been established.

25 I find the definition itself unsatisfactory

1
2 and I think an example will demonstrate it
3 to you.

4 If you were sitting here as a juror in a civil
5 case, this particular principle would apply
6 distinguishing direct evidence from indirect or
7 circumstantial evidence.

8 Let's assume you were listening to a case
9 involving a personal injury, A suing B.

10 Let's assume that A claimed that B passed
11 a stop sign located at a certain intersection
12 without stopping and struck A, causing certain
13 injuries.

14 Well, if my courtroom deputy, Mr. Adler and
15 myself were standing on the street corner, and my
16 back was to the stop sign and Mr. Adler was
17 facing me, and he had the stop sign and the roadway
18 in full view, he would testify differently than I
19 would because he saw things that I did not see.

20 To demonstrate the difference it is necessary
21 to identify the contested issue.

22 B says in effect, "I stopped at the stop
23 sign and then proceeded."

24 A says, "Oh, no. You were travelling along
25 the roadway and passed that stop sign without stopping."

Charge

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2 If Mr. Adler were called, having seen what
3 occurred at the stop sign, he could give direct
4 testimony on that issue as to whether or not the
5 motor vehicle stopped at the stop sign.

6 He states, "Well, I was talking to the Judge
7 at that particular time and place," and gives
8 lighting conditions and probably weather conditions,
9 but the important thing is he would probably say,
10 "Well, I saw the defendant B travelling in his
11 white Cadillac at about 60 miles per hour and I
12 saw him pass the stop sign without stopping and
13 strike the plaintiff, A."

14 Now, that is direct testimony on that issue.

15 If I were called to the stand, I could not
16 testify that I saw the car pass the stop sign without
17 stopping. Rather, I could only testify to the
18 circumstances and I might say, "As I turned to my
19 left, while talking with Mr. Adler, a white
20 Cadillac came within my peripheral vision and I
21 saw it travelling at about 60 miles per hour. I
22 lost sight of it for about one hundred fifty feet,
23 and 2 or 3 seconds later, I again saw the same
24 car travelling at the same speed, strike the
25 plaintiff and cause the injuries."

Charge

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2 Now, the circumstances are that the car
3 was travelling 60 miles an hour; that it traversed
4 about 150 feet in a matter of 2 or 3 seconds
5 and struck the plaintiff. I think it would be
6 fair to assume and infer that that motor vehicle
7 passed the stop sign without stopping.

8 Now, you will be called upon in this case,
9 to draw inferences based on good common sense and
10 experience.

11 One of the questions you will be called upon
12 to determine is what the substance was, if you
13 believe that there was dealing in a substance.

14 The Government claims it was opium and heroin.
15 The Government must prove that beyond a reasonable
16 doubt.

17 Again, you may take into consideration the
18 conversations, the surreptitious manner in which
19 the substance was handled, if you believe it was
20 concealed in one of the cabins aboard the ship,
21 concealed under the refrigerator, the price paid
22 for it, the manner in which it was transported.

23 From all that, in addition to the way the
24 parties described it, you decide whether the
25 Government has proved that the substance that the

Charge

parties dealt in was opium and/or heroin.

Obviously, the physical substance is not here, but you will be called upon to determine from all of the circumstances, as to what that substance was, or to put it more correctly and accurately, whether the Government proved beyond a reasonable doubt what the substance was.

(continued next page.)

Charge

1
2 THE COURT: (continuing) But what is the
3 evidence in the case? The evidence is the
4 testimony of the witnesses and the exhibits that
5 were marked in evidence.

6 Now, there were some exhibits that were
7 marked for identification. For example, sometime
8 this afternoon during your deliberations, if you
9 ask me for Special Agent O'Grady's report, I will
10 not give it to you because it is not in evidence.
11 It was just marked for identification, and that
12 is exactly what it means, it is to identify the
13 document with the testimony that was given by the
14 witness, because the witness, if you recall, was
15 handed the document and it was designated as "exhibit
16 so and so for identification."

17 But, it is not in the record. It is not in
18 evidence and you may not see it.

19 However, you may see all the other exhibits
20 that are marked in evidence.

21 In addition, the stipulation that was
22 entered into between the lawyers is part of the
23 record and evidence in the case, and on that and
24 on the fair and reasonable inferences drawn from
25 the established facts, you will come to your

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2 determination -- nothing else. Good common
3 sense, experience, is the proper ingredient. It is
4 the tool through which you will seek, and I am
5 sure find, the truth -- not bias, not prejudice,
6 not emotion.

7 It may be of help to you if I indicate
8 what was not part of the record, what was not
9 evidence in the case.

10 For example, the opening statements made
11 by counsel are very helpful to the jury, but they
12 are not evidence. Statements by the Court are
13 not evidence. I said very little in this case.
14 I recall asking a few questions, but the statements
15 by the Court are not evidence. I was not sworn.
16 I was not under oath. I didn't submit to cross
17 examination, so if I made some statements, whether
18 appropriate or not, they are not evidence.

19 The summations by the lawyers are not
20 evidence. They dealt with the evidence. They
21 quoted, or at least if they didn't quote, they
22 referred to it, but it is your recollection as to
23 what was said that counts and what is in the
24 exhibits that counts, not what counsel said the
25 testimony was.

1
2 Again, that is to aid you in your duty to
3 finding out what happened.

4 Each one argued the evidence, and that was
5 to focus on what the lawyers felt was the important
6 part of the evidence. But, the statements of
7 counsel are not evidence.

8 There were times, and very few times that
9 objection was sustained to a question. You may not
10 speculate on what the answer might have been if the
11 witness were allowed to answer. Again, the Court
12 said, "Don't answer." So, it is not for you to
13 wonder or think about what the witness would have
14 said. It is not in the record and therefore cannot
15 be considered by you.

16 The most important task you have is to
17 assess the credibility, the believability of the
18 witnesses.

19 You, the jurors, are the sole judges of
20 the credibility of the witnesses, which means the
21 believability of their testimony and the weight
22 their testimony deserves.

23 It is your duty to scrutinize the testimony
24 given and the circumstances under which witnesses
25 testify, and every matter in evidence which tends

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2 to show whether a witness is worthy of belief.

3 In your business, in your social life, you
4 have weighed the credibility of people; your
5 respective spouses, and if they told a little fib,
6 you recognized it; your children, if they weren't
7 exactly telling the truth, your friends -- you have
8 done it.

9 Here, you are called upon to do it under
10 more or less formalized rules, but it is no
11 different than what you have been doing. You are
12 thoroughly experienced in weighing evidence and
13 though you don't believe it at this point, you will
14 learn that you can deal with the evidence.

15 You take into consideration the intelligence
16 of the witnesses, the difficulty that they have in
17 language, the motive and state of mind of the
18 witness, why the witness is testifying, are his
19 reasons for testifying those which would indicate
20 that he would lie?

21 Take into consideration the demeanor and
22 the manner in which the witness testified while on
23 the witness stand. Did the witness give direct and
24 full answers to questions? Was he evasive? Did
25 he try to hide something?

1
2 Take into consideration the witness' own
3 ability to observe the matters to which he testified;
4 whether he shall have impressed you as having an
5 accurate recollection of the events to which he has
6 testified.

7 Take into consideratin the relationship the
8 witness bears to either side of the case, the manner
9 in which the witness may be effected by the verdict,
10 the extent to which the witness is contradicted or
11 corroborated by other evidence in the case.

12 If you find that a witness has knowingly
13 testified falsely concerning a material matter, you
14 have a right to distrust all the testimony that
15 that witness gave, or you may decide to accept a
16 portion of that witness' testimony that you recognize
17 as credible. That principle just underscores the
18 wide discretion the jury has in assessing
19 credibility.

20 You may find a witness lied as to a material
21 fact and that he did it intentionally and
22 knowingly.

23 Well, you may say: "I won't believe anything
24 that witness says;" or, you may say, "I know he
25 lied as to that but I think he told the truth as

1
2 to this" and again, that is good common sense and
3 experience.

4 The law does not compel a defendant in a
5 criminal case to take the stand and testify. No
6 inference of guilt may be raised and no other
7 unfavorable inference of any kind may be drawn from
8 the failure of the defendant to testify.

9 A defendant, as previously charged, may
10 rely on the Government's failure to prove the
11 defendant's guilt. It would be improper of the
12 jury to discuss the defendant's failure to testify
13 during its deliberations.

14 Mr. Wong Shing Kong, whom I will refer to
15 as Mr. Wong, says he participated in the alleged
16 crime. His statement that he participated should
17 not be charged against this defendant. That is his
18 statement, Wong's statement, "I participated. I did
19 it. I committed criminal acts."

20 An alleged accomplice, which Mr. Wong is --
21 and the others too, I might include, because they
22 say they participated in some respects in other
23 crimes -- an alleged accomplice does not become
24 incompetent as a witness because of his participation
25 in the crime charged. On the contrary, the

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2 testimony of an alleged accomplice alone, if
3 believed by the jury to be true beyond a reasonable
4 doubt, may be of sufficient weight to sustain a
5 verdict of guilty, even though not corroborated or
6 supported by other evidence.

7 However, the jury should keep in mind that
8 such testimony is always to be received with caution
9 and weighed with great care. You should never
10 convict a defendant upon the unsupported testimony
11 of an alleged accomplice, unless you believe such
12 unsupported testimony to be true beyond a
13 reasonable doubt.

14 All of the Government's witnesses have been
15 convicted of felonies. The testimony of a witness
16 may be discredited or impeached by showing that the
17 witness has been convicted of a felony.

18 A felony conviction does not render a witness
19 incompetent to testify, but is merely a circumstance
20 which you may consider in determining the credibility
21 of the witness. It is the province of the jury to
22 determine what effect the conviction has on the
23 testimony.

24 The defendant has pointed out prior statements
25 made by the witnesses, particularly Mr. Wong. I

Charge

1 don't direct this solely to Mr. Wong's testimony.
2 It may have been to others, but if so, I don't recall
3 it. However, it applies to the others if you find
4 they made prior statements.
5

6 The defendant says, in effect, "those prior
7 statements made to Special Agent O'Grady or in the
8 Grand Jury or anybody else" -- but those are the
9 only two places I can think of where Mr. Wong made
10 statements -- in the Grand Jury and to Agent O'Grady
11 -- but if there are others, it applies to that too
12 -- and the defendant offered those prior statements
13 on the ground that they were inconsistent with the
14 testimony given by Mr. Wong before you.

15 At times, for example, I can recall Mr. Wong,
16 in the statement that he hand-wrote in Chinese, he
17 said, "The westerner" --

18 MR. CLAYMAN: That is Mr. Lam.

19 THE COURT: I'm sorry. That is Mr. Lam. Yes.
20 I saw the jury disagreeing with me.

21 Yes, Mr. Lam Kin Sang whom I will call Mr.
22 Lam made reference to "the westerner."

23 Well, the defendant is, in effect saying,
24 "the westerner could mean anybody" and he didn't
25 mention Olsen, so the failure to mention Olsen is

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2 inconsistent with what he said before you.

3 Now, my claiming the position of the
4 Government or the defendant does not mean I
5 believe either argument. That is solely a question
6 for you. I am just pointing out the example to
7 demonstrate the principle.

8 In a statement of Mr. Wong's, before the
9 Grand Jury, he said that he recruited Mr. Olsen in
10 1971. Now, if I am wrong about that, you just
11 decide what the testimony was. I just want to give
12 you an example. I don't think it is important
13 whether I quote it correctly or not.

14 The position of the defendant is that the
15 statement that Mr. Olsen was recruited in 1971 was,
16 in effect, a statement that he first met Mr. Olsen
17 in 1971.

18 The Government pointed other proof out and
19 said they had met some other time, in '67 or '68.
20 But again, the defendant is attempting to show, and
21 maybe successfully -- that depends on you -- that
22 those statements were inconsistent with the
23 testimony he gave here.

24 Now, it is for you and you alone to decide
25 whether the prior statement was inconsistent with

1
2 what Mr. Wong or Mr. Lam said here, and if you
3 decide that the prior statement was inconsistent,
4 you decide whether it was inconsistent to a material
5 or immaterial fact, and then you decide the effect
6 it has on the credibility of that witness' testimony.

7 Now, if the witnesses said exactly the same
8 thing when they repeated the version of what occurred,
9 said it exactly the same way, gesture for gesture
10 and pause for pause, you probably would suspect the
11 credibility of that witness, because it would appear
12 to be rehearsed. There is a certain amount of
13 variation and variance that we can expect from
14 people telling the truth and people attempting to
15 tell the truth, and then that is a matter of common
16 sense and experience.

17 (continued next page.)
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Charge

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2 THE COURT: (continuing) You and I know
3 that three people can see the same thing and attempt
4 to testify truthfully to everything they saw and
5 each one will tell it differently than the other,
6 and you know that people who you regard as truthful
7 can attempt to repeat what occurred on a number of
8 occasions and you'd expect some normal variation.

9 You decide, if you find an inconsistency,
10 whether it is a normal variation in the retelling
11 or whether it is an inconsistent statement and
12 should affect credibility.

13 Again, I say you find to what extent
14 credibility is affected.

15 Now, we turn to the indictment.

16 I will first read the statute on which the
17 indictment is based. The Congress determines what
18 is a crime, and so it is a violation of a section
19 of a statute enacted by the Congress that brings
20 forth the form of charge in the indictment.

21 Most of federal law is codified. They are
22 in books like this and they have titles.

23 This title is "Food and Drugs, Title 21."

24 That's why, when I read the indictment and
25 you hear some numbers, you will know I am reading

1
2 Section 173 and 174 of Title 21 of the United States
3 Code. I will only read the pertinent portions of it.
4 These sections of Title 21 are designed to very
5 closely supervise and control the importation, the
6 processing, the sale, the distribution and
7 transportation of narcotics.

8 Section 173 bars all heroin and opium from
9 entering into this country, except for certain
10 medicinal purposes, where the commissioner finds it
11 necessary for either medicinal or experimental
12 purposes.

13 I will just read the first portion of it:

14 "It is unlawful to import or bring any
15 narcotic drug into the United States or any territory
16 under its control or jurisdiction except" -- and
17 then it goes on with the exceptions, which are not
18 pertinent here.

19 Section 174 defines the criminal statute
20 and it says:

21 "Whoever fraudulently or knowingly imports
22 or brings any narcotic drug into the United States
23 or any territory under its control or jurisdiction,
24 contrary to law, or receives, conceals, buys, sells
25 or in any manner, facilitates the transportation,

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2 concealment or sale of any such narcotic drug
3 after being imported or brought in, knowing the
4 same to have been imported or brought into the United
5 States contrary to law, or conspires to commit any
6 such acts in violation of the laws of the United
7 States, violates the statutes", commits a crime.

8 Now I charge you that opium and heroin, which
9 is a derivative of crude opium, is a narcotic drug
10 under this section.

11 I will read the three counts in the indictment,
12 but count 1 is a different type of a crime.
13 Conceptually, it is distinct from the crimes charged
14 in count 2 and count 3.

15 The idea in count 1 is that the proscription
16 -- the prohibition stated in the statute, is the
17 agreement to commit the crime, while in count 2 and
18 3, it is the actual crime itself.

19 Count 1 charges defendant, together with
20 others, agreeing to import, to buy, to sell, to
21 conceal and facilitate its transportation. So as
22 you will see, it is not necessary to approve the
23 accomplishment, the fulfillment, in order to prove
24 the conspiracy charge.

25 While on the other two charges, the

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2 Government must prove the actual happening, that
3 there was the importation in the one case of the
4 heroin, and in the other case, of the opium.

5 I will read the first count. It is
6 kind of lengthy and I must edit it in some way
7 because other defendants are mentioned and other
8 co-conspirators, and I have agreed with counsel
9 that I will eliminate all the other defendants
10 so that you understand this is a charge against
11 Ernst Olsen, and the question before you is not
12 what happened to the others, or why are not they
13 before you at this time. The only question before
14 you is whether the Government has proved the guilt
15 of this defendant by proof beyond a reasonable
16 doubt.

17 Count 1, which is the conspiracy count,
18 charges as follows:

19 "On or about and between the first day of
20 January, 1969, and the 30th day of June, 1970,
21 both dates being approximate and inclusive,
22 within the Eastern District of New York and
23 elsewhere, Ernst Olsen, together with Lui Ngau,
24 Wong Sum Yi, Per Buus Hansen, George Sun, Cheng
25 Kam Cheung, Yeung Tak, Lennart Bo Holmgren,

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2 Kjeld V. Krogh, Wong Yiu Cheung, Tung Yau Sang,
3 Lee Louie, Jean Liu, Tam Wing Git, also known as
4 "Hom Wing Git" and Benny Fong, Cheung Keng Fai, Ngau
5 Sau Tung, Wong Shing Kong, Kin San Lam and George
6 Wong, named herein as co-conspirators, but not as
7 defendants, and others known and unknown to the
8 Grand Jury, wilfully, knowingly and unlawfully did
9 combine, conspire, confederate and agree together
10 and with each other to violate sections 173 and
11 174 of Title 21, United States Code.

12 "1. It was part of said conspiracy that
13 the defendants and co-conspirators fraudulently
14 and knowingly would import and bring into the United
15 States large quantities of heroin and opium,
16 narcotic drugs, contrary to law.

17 "2. It was further a part of said conspiracy
18 that the defendants and co-conspirators unlawfully,
19 wilfully and knowingly would receive, conceal, buy,
20 sell and facilitate the transportation, concealment
21 and sale of large quantities of heroin and opium,
22 narcotic drugs, after the narcotic drugs had been
23 imported and brought into the United States, knowing
24 the same to have been imported and brought into the
25 United States contrary to law.

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2 "3. It was further a part of said
3 conspiracy that the defendants and co-conspirators
4 would conceal the existence of the conspiracy and
5 would take steps designed to prevent disclosure of
6 their activities.

7 "In furtherance of the conspiracy and to
8 effect the objects thereof, the following overt acts
9 were committed within the Eastern District of New
10 York and elsewhere:

11 "Overt Act number 1:

12 "In or about January, 1969, the defendants
13 Lui Ngau and Wong Sum Yi met with co-conspirator
14 Wong Shing Kong in Singapore.

15 "2. In or about March, 1969, the defendant
16 Per Buus Hansen removed approximately 5 kilograms
17 of opium from the M.S. NICOLINE in Brooklyn, New
18 York.

19 "3. In or about March, 1969, the defendant
20 Cheng Kam Cheung received approximately 5 kilograms
21 of opium in Brooklyn, New York.

22 "4. In or about August, 1969, the
23 defendant Yeung Tak met with co-conspirators Wong
24 Shing Kong and Cheung Keng Fai in Hong Kong.

25 "5. In or about November, 1969, the

Charge

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2 defendant Ernst Olsen carried approximately 2
3 kilograms of heroin aboard the M.S. LEXA MAERSK in
4 Manila, Philippines.

5 "6. In or about January, 1970, the
6 defendant Ernst Olsen, sent a cable to the defendant
7 George Sun in Brooklyn, New York.

8 "7. In or about January, 1970, the
9 defendant Ernst Olsen, Lennart Bo Holmgren and
10 Kjeld V. Krogh, removed approximately 5 kilograms
11 of heroin and 10 kilograms of opium from the
12 M.S. LEXA MAERSK in Brooklyn, New York.

13 "8. In or about January, 1970, the defendant
14 Lee Louie, met with the co-conspirators Wong Shing
15 Kong and Kin Sang Lam in New York, New York.

16 "9. In or about February, 1970, the
17 defendant Jean Liu received approximately 3
18 kilograms of opium in New York, New York.

19 "10. In or about February, 1970, the
20 defendant Tam Wing Git, also known as Hom Wing Git,
21 received approximately 3 kilograms of opium in
22 Brooklyn, New York.

23 "11. In or about February, 1970, the
24 defendant Tung Yau Sang received approximately two
25 kilograms of opium and one kilogram of heroin in

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2 New York. New York.

3 "12. In or about April, 1970, the
4 defendant Wong Yiu Cheung delivered approximately
5 1 kilogram of heroin to co-conspirator George Wong
6 in New York, New York.

7 "13. On or about June 2, 1970, the defendant
8 Benny Fong sold approximately one-half kilogram
9 of heroin in New York, New York.

10 "Count Two:

11 "In or about January, 1970, within the
12 Eastern District of New York, Ernst Olsen, together
13 with Lui Ngau, Wong Sum Yi, Per Buus Handzen,
14 George Sun, Cheng Kam Cheung, Yeung Tak, Lennart Bo
15 Holmgren, Kjeld V. Krogh, Wong Yiu Cheung, Tung
16 Yau Sang, Lee Louie, Jean Liu, Tam Wing Git, also
17 known as Hom Wing Git and Benny Fong, fraudulently
18 and knowingly did import and bring into the United
19 States approximately 5 kilograms of heroin, a
20 narcotic drug, contrary to law in violation of Title
21, United States Code, sections 173 and 174."

22 Now, Count Three is exactly the same as
23 Count Two. It was the same importation, but they are
24 in two counts because they are two separate drugs.
25 One was charged to be heroin, and the other is

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2 charged to be opium.

3 Count Three reads as follows:

4 "In or about January, 1970, within the
5 Eastern District of New York, the defendant Ernst
6 Olsen, together with all those I have just mentioned,
7 fraudulently and knowingly did import and bring into
8 the United States approximately 10 kilograms of
9 opium, a narcotic drug, contrary to law, in violation
10 of 21 United States Code Section 173 and 174."

11 (continued next page.)
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2 THE COURT: (Continuing) I again want to
3 alert you to the limitation on the use of evidence
4 offered by the Government before the conspiracy started,
5 alleged to be on or about January 1, 1969, and after
6 the conspiracy terminated, which is alleged to be
7 the 30th day of June, 1970.

8 You judge the defendant on the charges in
9 this indictment, nothing else. The question is
10 whether he committed the crime of conspiracy in
11 this indictment.

12 Evidence was offered and admitted prior to
13 the beginning of the indictment and subsequent to
14 its termination, solely to determine whether this
15 is the defendant who committed the crimes in this
16 period, and whether the evidence supported the
17 claim here that the crimes were committed by this
18 defendant knowingly and wilfully.

19 In other words, was he aware of the crime
20 he was committing. Did he do it wilfully, did he
21 do it voluntarily and intentionally, knowing that it
22 was a violation of law?

23 It is limited to that use.

24 Now, I indicated to you that a conspiracy was
25 an understanding, an agreement between two or more

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2 persons to commit a crime. A conspiracy has been
3 defined as a partnership in criminal purposes in
4 which each member becomes the agent of all the
5 other members of the conspiracy. The gist of the
6 crime being the agreement of people to get
7 together in a criminal venture and that is what a
8 conspiracy is. The members of the conspiracy are
9 called conspirators or co-conspirators. The mere
10 similarity of conduct among various persons and the
11 fact that they have associated with each other,
12 and may have assembled together and discussed
13 common names and interests, does not necessarily
14 establish proof of the existence of a conspiracy.

15 However, the Government need not prove that
16 the members entered into any formal or explicit
17 agreement, as you might have in a legitimate
18 partnership. The Government must prove beyond a rea-
19 sonable doubt that somehow and through some contrivance
20 or tacit understanding, the parties understood and
21 agreed that they were in an unlawful conspiracy.

22 The Government must prove beyond a reasonable
23 doubt that the conspiracy alleged in the indictment
24 was knowingly formed. In other words, the parties
25 understood that they were in the narcotics business,

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2 in the business of importing opium and heroin, and
3 that one or more of the members of the conspiracy
4 described in the indictment committed an overt act
5 -- did something, even though it is innocent, a
6 telephone call, a telegram.

7 Of course, other overt acts are obviously
8 criminal, and certainly come under the definition
9 of bringing in of the heroin, the purchasing of the
10 heroin, the receiving of payment for the heroin.
11 Those are overt acts.

12 The Government must prove beyond a reasonable
13 doubt that it was one member of the conspiracy who
14 committed an overt act in furtherance of the object-
15 ives of the conspiracy, knowing that it was for the
16 purpose of furthering the objectives or purposes
17 of the conspiracy.

18 One may become a member of the conspiracy
19 without knowing all the details of the conspiracy.
20 A person may accidentally, inadvertently do something
21 that may aid the conspiracy and not realize it, may
22 not be aware of it.

23 When we talk about the proof required to
24 bring the defendant into the conspiracy, the
25 Government must prove beyond a reasonable doubt that

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2 he was aware of what he was doing, that he did not
3 do it innocently, accidentally or in any other
4 innocent manner, but that he entered this venture in-
5 tentiously, voluntarily, knowingly and understanding
6 that it was a violation of United States law.

7 The Government does not have to prove that
8 the defendant knew the particular section that was
9 being violated, but that he knew it was a violation
10 of law to import and do business in narcotics.

11 The Government must prove the participation
12 of the defendant by testimony of what the defendant
13 did, what the defendant said.

14 Now, there were declarations of others
15 admitted into evidence and declarations of Mr. Wong,
16 statements, conversations, outside the presence of
17 this defendant.

18 I charged you at the time this evidence was
19 admitted, and I will recall to you what I said. Where
20 the Government establishes the conspiracy,
21 conversations by one conspirator or acts by one
22 conspirator during the course of the conspiracy, and
23 in furtherance of the business or objects of the
24 conspiracy -- which means to help the narcotics
25 business, in this case the opium and heroin business

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2 -- does not bind this defendant unless you find that
3 the defendant knowingly and wilfully entered into
4 the conspiracy. Once you find that, then he is
5 bound by what happened during the term of the
6 conspiracy in furtherance of the objects of the
7 conspiracy, if those acts and if those conversations
8 were carried on by a member of the conspiracy.

9 If you do not find all that happened, if you
10 find the Government did not establish the conspiracy,
11 that the conversation was conducted by a member of
12 the conspiracy during the term of the conspiracy,
13 and in furtherance of the objectives of the
14 conspiracy, and if you find the Government failed
15 to prove that the defendant knowingly and wilfully
16 became a member of the conspiracy, then just
17 disregard that testimony.

18 The Government must prove the following
19 essential elements of the crime of conspiracy in
20 order to establish its case:

21 First, that the conspiracy described in
22 the indictment was knowingly and wilfully formed
23 and was existing at or about the time alleged.

24 Second, that the accused, knowingly and
25 wilfully became a member of the conspiracy.

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2 In other words, that the defendant was aware
3 that the conspiracy was organized for the purpose of
4 importing, selling and distributing opium and
5 heroin, that he knew it was a violation of law
6 to enter into such a venture, and that knowing that,
7 the defendant, nevertheless entered into it.

8 Third, that one of the conspirators,
9 thereafter knowingly committed an overt act in
10 furtherance of some object or purpose of the
11 conspiracy.

12 The following are the essential elements of
13 the crime charged in count two:

14 First, in or about January of 1970, the
15 defendant, Ernst Olsen, imported and brought into
16 the United States approximately 5 kilograms of
17 heroin.

18 Second. That the defendant, Ernst
19 Olsen, knew that the substance that he was bringing
20 into the United States was heroin, and that he
21 wilfully brought it into the United States, and
22 again, that was done voluntarily and intentionally
23 and not innocently, inadvertently.

24 On Count Three, the Government must prove
25 beyond a reasonable doubt:

Charge

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2 1. That the defendant, Ernst Olsen, imported
3 and brought into the United States 10 kilograms
4 of opium.

5 2. That he imported the opium knowing that
6 it was opium and doing such act wilfully.

7 Again, that it was done voluntarily and
8 intentionally and knowing that it was a violation
9 of law to import opium.

10 Now, after you have considered all the
11 evidence in the case and you have arrived at a
12 verdict, that verdict will be reported to me through
13 the marshals, who are assigned to the jury.

14 Do not tell me during your deliberations
15 how you stand at any one time as to any count.
16 Each count is to be judged separately.

17 To determine whether the Government has
18 sustained its burden as to each count. When you
19 have arrived at a verdict, do not tell me what
20 the verdict is. Do not say, "We find the defendant
21 guilty or not guilty."

22 Just say, "We have arrived at a verdict."

23 When that happens, I will call the jury
24 into the courtroom. I will ask the foreman to
25 stand and I will say, "In the United States of

Charge

America against Ernst Olsen, how do you find the defendant Ernst Olsen as to Count One?"

The foreman will tell me; "How do you find the defendant Ernst Olsen as to Count Two?"

Again, the foreman will tell me.

"And how do you find the defendant Ernst Olsen as to Count Three?"

Again, the foreman will tell me.

I will turn then to Juror No. 2 and say;

"You heard the verdict as rendered by the foreman. Is that your verdict?"

And I will go to 2, 3, 4, to 12.

When it is announced in open court, it then becomes the verdict in the case.

During your deliberations, you may want some testimony. It has been transcribed. I will try to locate what you want and I will read it to you in open court. Try to identify the witness whose testimony you would like to hear. If possible, identify the subject matter. I will give you only what you ask for and I will try not to give you any more and I will try not to give you any less. The exhibits marked in evidence will be sent into the jury room if you ask for them. If you do not ask

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2 for them, I won't send them in.

3 Each one of you must arrive at your verdict
4 through your own mental processes. You are not to
5 rely on someone else doing the work for you. Each
6 one of you has that obligation. You must do it
7 fairly, on the evidence, free of all bias, prejudice,
8 sympathy, but you have a concomitant obligation to
9 discuss the evidence with your fellow jurors. You
10 violate the oath you have taken if you refuse to
11 talk to any juror on the evidence.

12 If you take an intransigent position and
13 say, "I think the defendant is guilty," or "I think
14 the defendant is not guilty," and refuse to talk to
15 the other jurors, that is not the jury process.
16 The jury process is a deliberative process.

17 If you have arrived at a tentative verdict
18 either way, and your fellow jurors convince you that
19 your original thought is not so, there is nothing
20 wrong in changing your mind, but you must do it based
21 upon the evidence. This is a matter of interchange
22 of views in order to arrive at your verdict. It
23 would be improper for you to come into the jury
24 room and say, "Well you decide the case. I'd rather
25 not, and I will go along with anything you say."

Charge

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2 That is totally wrong. Each one decides the case,
3 but communicates with the others, discusses the
4 case with the others, and in that way, you will
5 arrive at a fair verdict.

6 I cannot think of anything else I want to
7 tell you at this point. I must discuss a few
8 matters with the lawyers. I will ask you to retire
9 to the jury room, but do not start your deliberations
10 yet. I will call you back again.

11 The jury is excused.

12 (Jury leaves courtroom.)

13 THE COURT: Are there any exceptions, Mr.
14 Clayman?

15 MR. CLAYMAN: No, your Honor.

16 THE COURT: Mr. Katcher?

17 MR. KATCHER: No exceptions, your Honor.

18 I have a couple of requests, your Honor,
19 not exceptions.

20 THE COURT: All right.

21 MR. KATCHER: I respectfully ask your Honor
22 to possibly re-emphasize the fulfillment of the
23 conspiracy relates to the dates set forth in the
24 indictment, because there has been an interchange
25 of this 1971, 1972 situation, in connection with

1 that the defendant is not being charged with any
2 crime or anything that may have occurred in 1971 and
3 1972, and that should not play any part basically
4 on whether there was a violation of the allegations
5 contained in count 1 of the conspiracy.

6 THE COURT: I will say it once again. I think
7 I said it, and I think you are asking for another
8 summation. I will emphasize it only for that
9 reason. There was a lot of testimony on subsequent
10 offenses and I just want to make sure that their
11 attention is drawn to the period in the indictment
12 and no other.

13 (continued next page.)
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MR. KATCHER: I have one further request
and that is the failure of the Government to produce
any witnesses under its control who were familiar
with the facts as contained in the indictment.

THE COURT: Well, there is no proof that
any witnesses under the Government's control --

MR. KATCHER: Except there was reference made
to certain special agents who interviewed and
consulted with the witnesses.

THE COURT: And? Would that be admissible
into evidence?

You have the right to ask for the witnesses --

MR. KATCHER: I know I have the right to
ask for the witnesses, but that wasn't my function.

THE COURT: I beg your pardon?

You cannot ask me to charge on an absent
witness who has no testimony to give.

MR. KATCHER: We have this situation
contained in the indictment where co-conspirators
are named. Your Honor handled that well in
redacting certain references to the defendant --

THE COURT: Only because I couldn't --

MR. KATCHER: I say your Honor handled it
very well and there is no criticism with that,
obviously.

1 But, in the same indictment, there were
2 individuals, four in total, named as co-conspirators,
3 but not defendants, who are obviously under the
4 control of the Government.

5 THE COURT: Why is it obvious?

6 MR. CLAYMAN: Three of them are dead, your
7 Honor.

8 MR. KATCHER: Well, how would I know that?
9 How would the members of the jury know that?

10 THE COURT: You didn't ask the question. Why
11 did you not ask the Government to produce them?

12 MR. CLAYMAN: Be glad to, Mr. Katcher.

13 THE COURT: There is only one inference I
14 can ask the jury to draw and that is on something
15 in the record. You have to show they are under the
16 control of the Government and that they have
17 testimony that is not cumulative and would add
18 something to the case and that all has to be at
19 the time of trial.

20 Even if Mr. O'Grady, for example, were
21 with the Government in 1972, if the Government
22 showed Mr. O'Grady was not with the Government
23 at the time of trial, then he was not under their
24 control and I would, of course, have directed the
25 Government to find him and bring him in if you had

1 made that request. But no such request was made.

2 MR. KATCHER: I acknowledge that no such
3 request was made.

4 THE COURT: What would he have said?

5 "I have interviewed all these people and they
6 said they were dealing in drugs."

7 You didn't want that. If you wanted that,
8 you would have offered the report of O'Grady. You
9 know that.

10 I don't think, "the absent witness" is
11 appropriate here. I think it is appropriate when
12 the record shows that the particular individual,
13 whether named in the indictment or not -- it may have
14 been "X" not named -- but it is shown that he is
15 an important witness in the control of the
16 Government. Then I would have said to the jury, "You
17 decide whether he is in the control of the Government."

18 But here, how can they decide that? There
19 is nothing in the record.

20 I have given "absent witness" charges. As a
21 matter of fact, there was a question of doubt raised
22 in Judge Medina's mind in one of the opinions where
23 I was affirmed recently, where the defendant, in the
24 summation, said, "Why didn't the Government bring
25 so and so? Why didn't the Government bring in so and

1 so"? And I said, "You decide whether the Government
2 should have brought in so and so" but I said, "The
3 defendant has the right of subpoena, and you decide
4 whether he should have brought in so and so."

5 I think it is an appropriate charge.

6 If a lawyer says that information, I say,
7 "I want you to know that the Government could have
8 brought him in, sure, but I also want you to know
9 the defendant has the right of subpoena."

10 I probably said a little more than that,
11 "Why didn't he do it", which, if I said, I shouldn't
12 have said, but, I don't remember.

13 Now here, Mr. Clayman says three of them
14 are dead. Why didn't he have notice from you that
15 you were going to say that so he could come in and
16 say, "Here are the death certificates."

17 Now, I am assuming O'Grady is under their
18 control but he cannot give any testimony. The only
19 testimony he could have given is on statements of
20 Wong, if Wong denied ever making them.

21 But, as I recall it, he finally said, "Yes,
22 I said it."

23 No, that I must decline.

24 MR. KATCHER: Okay.

25 THE COURT: Seat the jury.

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(Jury entered jury box at 11:55 A.M.)

THE COURT: I will excuse alternates number 1 and 2. You are excused and you may take your outer clothing from the jury room. Only 12 jurors may deliberate.

Now, your lunch has been ordered, and if you wait in my office, you can pick up your lunch there and have it wherever you find it is comfortable to have it.

(Whereupon alternate jurors 1 and 2 were excused.)

THE COURT: You are about to be excused to deliberate on the matter before you and I again want to remind you that you are to consider the charge in the indictment, charges in the indictment, and only those charges.

The evidence prior to the time of the commencement of the conspiracy and subsequent is to be used only to the limited extent I indicated to you.

Now, would you please swear in the marshals?

(Whereupon, two deputy United States marshals were sworn by the Clerk of the Court at 11:57 A.M.)

THE COURT: The jury is excused to decide the matter before it.

1 I may say this before you go:

2 I'm going to excuse the lawyers and the
3 litigants for lunch and I'm going to tell them that
4 they need not return until about 1:30.

5 Now, during that period, I cannot answer
6 any of your questions. Don't hesitate to write them,
7 but I cannot decide these things alone. I have to
8 take it up with the lawyers.

9 So, if you don't hear from me before 1:30,
10 don't think I have forgotten about you or that I
11 am disinterested in what you are doing. That is
12 not the case.

13 However, I cannot do anything until 1:30.

14 So, have your lunch and begin your
15 deliberations.

16 (Jury is excused.)

17 (Jury is excused for deliberations at 12
18 o'clock Noon.)

19 THE COURT: Now, there are a few exhibits.
20 I'd like the lawyers to agree on what has been
21 marked in evidence.

22 THE CLERK: Just 3, your Honor.

23 THE COURT: Only three?

24 MR. KATCHER: The passport and the stipulation--

25 MR. CLAYMAN: Yes. Do you want me to leave

1 THE COURT: Please seat the jury.

2 (Jury entered jury box at 3:20 P.M.)

3 THE COURT: The jury asked for definition
4 of conspiracy as related to charges 2 and 3.

5 If I interpret the question correctly, you
6 wish to know whether, if the crime is completed,
7 the importation, whether the conspiracy charge
8 merges with it as if it were just one offense and
9 I see some members of the jury shaking their
10 heads.

11 (Members of the jury nodding affirmatively.)

12 THE COURT: Well, that may be a little
13 confusing to you.

14 It does not merge.

15 The crime of conspiracy, as I indicated, is
16 the agreement, the understanding between 2 or more
17 to violate the narcotics laws and the crime is
18 completed with the Government proves beyond a
19 reasonable doubt that the conspiracy is established
20 as set forth in the indictment for the objects set
21 forth in the indictment for the terms set forth
22 in the indictment; that the defendant, knowingly
23 and wilfully entered into the conspiracy and I
24 explained and defined what knowingly and wilfully
25 was and then, that some member of the conspiracy,

1 one of the conspirators, knowingly committed some
2 overt act in pursuance of the purposes of the
3 conspiracy which was the importation and dealing
4 in opium and heroin.

5 Now, the overt act does not necessarily
6 have to be criminal in nature like, the importation
7 of the heroin or opium. And so that even if the
8 crime is not completed, if all those elements have
9 been established by the Government, the crime of
10 conspiracy is complete.

11 When I say, "even if the crime is not completed."
12 even if what we call the substantive crime, the
13 importation is not completed, you may nevertheless
14 find that the crime of conspiracy has been commit-
15 ted.

16 Now here, the Government charges, in
17 addition to conspiracy, that the crime was completed,
18 the substantive crime of importing the opium in the
19 one count and importing the heroin in the other.
20 That goes beyond the agreement. That is a separate
21 crime.

22 The Government says that the defendant know-
23 ingly and wilfully brought into this country in
24 January, 1970, heroin in one count and opium in
25 the other.

1 So, even if you find the Government proved
2 the substantive crimes by proof beyond a reasonable
3 doubt, to wit, in counts 2 and 3, it does not
4 preclude your finding that the defendant did enter
5 into a conspiracy with others to violate the
6 narcotics laws. They do not merge. They are
7 separate and distinct crimes. Each has its
8 essential elements, as I charged you.

9 I hope I have helped you and not confused
10 you.

11 Go back and deliberate further on it and
12 if you have any further questions, just write to me
13 again.

14 (Jury excused at 3:35 P.M. for further
15 deliberations.)

16 THE COURT: Any exceptions to the charge?

17 MR. KATCHER: I take an exception.

18 THE COURT: Please be specific about it.

19 MR. KATCHER: Yes.

20 I think your Honor omitted or failed to
21 tell the jury that there could be an abandonment
22 of the agreement which would have vitiated every-
23 thing pertaining to counts 2 and 3.

24 THE COURT: Anything else?

25 MR. KATCHER: That's it, your Honor.

1 THE COURT: Your exception is noted.

2 I appreciate your waiting around.

3 MR. KATCHER: We have no choice.

4 THE COURT: I have a hearing.

5 MR. KATCHER: Yes. I will be on the 6th
6 floor.

7 THE COURT: No. I'd like you to wait here
8 unless you have an engagement before Judge Judd.

9 MR. KATCHER: No. It is someone I know who
10 is up there, but I will stay here.

11 THE COURT: Yes. I would appreciate it,
12 because if you are not here, it makes it very
13 difficult to assemble everyone.

14 (Recess taken.)

15 (continued next page.)
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* * *

1 THE COURT: No. I don't think that that
2 gives them enough.

3 Call in the jury and I will do the best I
4 can with both lawyers objecting to it.

5 (Jury entered jury box at 4:15 P.M.)

6 THE COURT: The first question is;
7 "When is it considered that drugs are
8 imported?

9 "Does it mean that the drugs must be
10 physically removed from the ship or is it considered
11 imported as long as the ship is docked in the U.S.A.?"

12 It is imported when the ship is docked at
13 the pier.

14 It isn't necessary for the Government to
15 prove that the drugs were taken off the ship.

16 However, you must understand that guilt is
17 a personal thing, and the Government must prove
18 beyond a reasonable doubt that it was this
19 defendant that imported it; that he had either
20 actual or constructive possession of the drugs.

21 Now, actual possession means that the party
22 had physical control and dominion over it. He
23 could do what he wanted with it, destroy it, sell
24 it, give it away.

25 Constructive possession means, though not in

1 actual possession, he had the authority to dispose
2 of the drugs. He had control of it.

3 Now, it could be sole possession or joint.

4 My courtroom deputy Mr. Adler and myself,
5 for example, if we owned some physical substance,
6 we'll say -- well, what is of value?

7 JUROR NO. 1: Gold.

8 THE COURT: All right. Let's say gold.
9 You called it.

10 Let's say gold.

11 We both owned the gold. I had the right to
12 dispose of it and so did he, but he had the gold
13 in his actual possession, he would have physical
14 possession. But, he would hold the gold for both
15 so it would be joint.

16 The Government, in addition to proving that
17 the drugs that came in on the ship, were imported
18 or brought into this territory, when it docked at
19 Pier 11, must also prove that Ernst Olsen had
20 possession actual or constructive, of the drugs.

21 Now, I cannot answer questions that you
22 ask.

23 You ask:--

24 "The drugs that were brought onto the
25 LEXA MAERSK on November, 1969, were brought by whom

1 and were placed aboard the ship?"

2 MR. KATCHER: That's in the testimony.

3 THE COURT: I beg pardon?

4 MR. KATCHER: It's in the testimony.

5 THE COURT: I say, I will read the testimony
6 and you make up your own minds, because again, only
7 you can decide what the testimony means and no
8 one else.

9 I will start at page 41 line 2 and I must
10 say that the testimony I am going to read is not
11 -- does not agree exactly with what you ask, but I
12 think it will be disjointed if I just pick pieces
13 of it. So, I will read some of what you didn't
14 ask for.

15 This is the direct examination of Mr. Wong
16 by Mr. Clayman, beginning at line 2:

17 (Record read by the Court:)

18 THE COURT: I suspend at line 20 page 44.

19 The jury is excused for further deliberations.

20 (Jury is excused at 4:20 P.M.)

21 THE CLERK: Jury note marked Court exhibit
22 4 for identification.

23 (So marked)

24 MR. CLAYMAN: One exception, your Honor, and
25 that is that it was not clear to me, at least

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.

AUG 13 1975

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA :

-against- :

ERNEST OLSEN, :

Defendant. :

74 CR 627

United States Courthouse
Brooklyn, New York

July 11, 1975
10:00 a.m.

B e f o r e :

HONORABLE JACOB MISHLER, Chief U.S.D.J.

RAYMOND STALKER
ACTING OFFICIAL COURT REPORTER

Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: CHARLES CLAYMAN, ESQ.
Assistant United States Attorney

IRVING KATCHER, ESQ.
Attorney for Defendant

- - -

1 THE CLERK: For sentencing, Ernest Olsen.

2 THE COURT: Will you note your name on the
3 record for this proceeding?

4 MR. JENSEN: Peter Jensen.

5 THE COURT: Mr. Jensen, you were the interpre-
6 ter throughout this trial?

7 MR. JENSEN: Yes.

8 THE COURT: Ernest Olsen, do you have anything
9 to say before the Court imposes sentence on you?

10 THE DEFENDANT: I do not believe that you have
11 a right to have me before this court.

12 I do not believe you have a right to have me
13 before this court.

14 MR. KATCHER: Ask him why?

15 THE DEFENDANT: Because I have been kidnapped.
16 The law has been broken several times by bringing me
17 here.

18 THE COURT: Well, you must have read the
19 Toscanino case.

20 THE DEFENDANT: No.

21 MR. KATCHER: Ask him what happened. I don't
22 know what he's talking about.

23 THE COURT: How were you kidnapped?

24 THE DEFENDANT: I was kidnapped from a ship that
25 was anchored outside of Panama.

1 THE COURT: Who kidnapped you?

2 THE DEFENDANT: The FBI, two FBI marshals.

3 THE COURT: Who are the FBI marshals, can you
4 identify the individuals?

5 THE DEFENDANT: Yes. I could if I saw them
6 again.

7 THE COURT: What do they look like, first of
8 all, how many were there?

9 THE DEFENDANT: There's two marshals.

10 THE COURT: Two marshals?

11 THE DEFENDANT: Two marshals.

12 THE COURT: FBI?

13 THE DEFENDANT: Two U.S. Marshals.

14 THE COURT: Where did the marshals come from,
15 where were they stationed?

16 THE DEFENDANT: They brought me to Panama. So
17 I guess they were stationed there.

18 THE COURT: Let the record show he's speaking
19 English.

20 THE DEFENDANT: I speak English but not very
21 well.

22 THE COURT: They took you to the marshal's
23 office in Panama?

24 THE DEFENDANT: Not to the marshal's office.

25 THE COURT: Where did they take you?

1 THE DEFENDANT: To the police station.

2 THE COURT: Where?

3 THE DEFENDANT: In the Canal Zone.

4 THE COURT: Where in the Canal Zone?

5 THE DEFENDANT: In Panama.

6 THE COURT: Is there a street?

7 THE DEFENDANT: I'm not known there.

8 THE COURT: That's the first time you've ever
9 been there?

10 THE DEFENDANT: Yes.

11 THE COURT: Now, they took you right off the
12 ship, they came on the ship and took you off?

13 THE DEFENDANT: Yes.

14 THE COURT: Your own ship?

15 THE DEFENDANT: Not my own ship.

16 THE COURT: The ship which you were on?

17 THE DEFENDANT: A Danish ship.

18 THE COURT: Weren't you a seaman on that Danish
19 ship?

20 THE DEFENDANT: I was a seaman.

21 THE COURT: What is the name of the ship?

22 THE DEFENDANT: CHASTNE MAERSK.

23 THE COURT: Spell it.

24 THE DEFENDANT: C-H-A-S-T-N-E M-A-E-R-S-K.

25 THE COURT: Where were you on board the ship

1 when they came on board ship?

2 THE DEFENDANT: I was sleeping in my room, 4
3 o'clock in the morning. I wake up and --

4 THE COURT: Did you have this room by yourself
5 or was there another seaman there?

6 THE DEFENDANT: I was alone.

7 THE COURT: Alone?

8 THE DEFENDANT: Yes.

9 THE COURT: And did anybody see them take you
10 off the ship?

11 THE DEFENDANT: Yeah.

12 THE COURT: Who saw them take you off the ship?

13 THE DEFENDANT: Some of the crewmembers.

14 THE COURT: Name some of the crewmembers?

15 THE DEFENDANT: The captain.

16 THE COURT: The captain, what is his name?

17 THE DEFENDANT: I don't remember. It is
18 written in my book.

19 THE COURT: Mention some of the people on board
20 ship.

21 MR. KATCHER: Do you have the Judge's question,
22 Mr. Jensen?

23 MR. JENSEN: Yes.

24 THE DEFENDANT: The watchman on duty that night,
25 it was 4 o'clock in the morning. They come in and

1 arrest me. Most of the people was sleeping.

2 THE COURT: But who saw them take you off the
3 ship?

4 THE DEFENDANT: The watchman and the captain.

5 THE COURT: That is for sure?

6 THE DEFENDANT: That's for sure.

7 THE COURT: Did they try to stop the marshals
8 from taking you off the ship?

9 THE DEFENDANT: No. They told the captain I
10 was under arrest.

11 And the captain believed they, maybe they have
12 a right to do so. But, I do not believe so.

13 THE COURT: And what did the marshals look like?

14 THE DEFENDANT: One of them had -- around age
15 between 50 and 60 years old, red hair and about 170
16 centimeters in height.

17 THE COURT: This was in the Canal Zone of course,
18 the United States?

19 THE DEFENDANT: It was not inside the Canal
20 Zone. It was outside the Canal Zone, Balboa.

21 THE COURT: Did you tell your lawyer this at
22 any time previously?

23 THE DEFENDANT: It was the very first thing I
24 stated when I was brought here to New York. But, the
25 United States Attorney would not show my passport to

1 the Danish consulate stating my passport was on a
2 sight-seeing tour of Washington.

3 THE COURT: Did you ever move before this
4 Court --

5 MR. KATCHER: No, your Honor. I couldn't get
6 any verification. I was told about this a long time
7 ago, your Honor. I spoke to a Mister, I think a
8 Mr. Branigan who was at the time one of the United
9 States Attorneys from the Southern District.

10 He had some knowledge but he had nothing
11 official as to this, other than that he knew Mr. Olsen
12 had been brought from somewheres in the Canal Zone.

13 After appearing in the Magistrate's Office
14 there and then being transported from there to Miami
15 and from Miami to New York.

16 THE COURT: Where was he arrested?

17 MR. CLAYMAN: In the Canal Zone. There was an
18 arrest warrant.

19 This was an arrest by the United States --

20 MR. KATCHER: Mr. Branigan stated exactly what
21 Mr. Clayman just indicated. It was his understanding
22 that Mr. Olsen was arrested in the Canal Zone.

23 That the ship, he believed, this is all hearsay
24 naturally, that he believed that the ship was situated
25 in the Canal Zone and there was a boarding on the ship.

* * *

1 But he didn't know anything beyond that other than his
2 appearing here and speaking to --

3 THE COURT: We don't have to go through this.

4 I do not find any credible evidence to indicate
5 that this ship was not in the Canal Zone when the
6 arrest warrant was executed.

7 The motion to dismiss and vacate the verdict
8 and dismiss the indictment is denied.

9 MR. KATCHER: I might say something in connec-
10 tion with that.

11 THE COURT: Mr. Clayman, if the Government could
12 be heard for one moment?

13 MR. KATCHER: Our position is, I don't think there
14 is credible evidence or any issue here at all that the
15 defendant had waived any attack upon the jurisdiction
16 of the Court --

17 THE COURT: I would think so. But, I want to
18 tie up Toscanino.

19 MR. CLAYMAN: I want the Government's position
20 on the record.

21 THE DEFENDANT: The ship logs, that should be
22 evidence enough.

23 THE COURT: Do you have it?

24 THE DEFENDANT: It could be brought here.

25 THE COURT: That's not before me.

1 The claim was never made before and I won't
2 hear it now.

3 THE DEFENDANT: I tried it many times, to put
4 in a claim. It's not my fault. It was the very first
5 thing I stated when I came to New York.

6 THE COURT: Not before me.

7 MR. KATCHER: As I said. I heard about this
8 several months ago, your Honor, and I spoke to
9 Mr. Branigan and I have tried.

10 THE COURT: You heard about it before the trial?

11 MR. KATCHER: Oh, yes, your Honor.

12 But, I had nothing to do, nothing of substance.
13 Using your words, anything credible.

14 THE COURT: I'm using the Toscanino opinion.

15 MR. KATCHER: So other than the hearsay state-
16 ment from him or the statement made by Mr. Olsen, the
17 information obtained from Mr. Branigan, I tried to
18 get information on my own. But, I couldn't locate
19 his ship. I didn't know where it was located.

20 The Danish consulate tried to help me.

21 The Danish consulate did tell me he was brought
22 off before a Magistrate in the Canal Zone.

23 THE COURT: Where was he? He says he was
24 arrested and he calls it an abduction. The Government
25 calls it an arrest.

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1 MR. KATCHER: There's nothing that I was able
2 to ascertain where in truth and fact he was at the
3 time he was seized by the United States marshals.
4 I assume --

5 THE COURT: This is a case that the defendant
6 must show credible evidence before you're entitled to
7 a hearing.

8 MR. KATCHER: I am well aware of that. I could
9 have made an application on paper, but it would be
10 exactly as you say, devoid of competent or some basis
11 of credibility, other than a hearsay statement.

12 So that I was for the purposes of the record,
13 I was advised of it. So there shouldn't be any mis-
14 understanding later, if the defendant says so, I was
15 not informed of this --

16 THE COURT: Yes?

17 MR. KATCHER: He did tell me that when he was
18 brought here to the airport from Miami, Florida.

19 The Immigration officials refused to permit
20 the United States marshals to allow him to board a
21 plane to New York for entry into the United States.
22 It was only when the United States marshals, I assume
23 they were marshals, your Honor --

24 THE COURT: Yes?

25 MR. KATCHER: Threatened to arrest the Immigration

1 officers for interfering with the Governmental author-
2 rity and something happened which permitted them to
3 board the plane.

4 THE COURT: That doesn't lend any substance to
5 the claim at all. They tell the Immigration officers
6 all the time about admitting people into the United
7 States. This is not the first occasion which somebody
8 was brought into the country that was refused entrance
9 even though in the company of law officers.

10 It happened in the Toscanino case.

11 MR. KATCHER: I'm aware of the case.

12 THE COURT: So?

13 MR. KATCHER: I mean for the purposes of the
14 record I don't want the defendant at some time in the
15 future to say that nothing was brought before the
16 Court's attention as to what he related to me. But,
17 the proof I have, I haven't been able to get any. But,
18 as the observation your Honor made about the Immigra-
19 tion officers, naturally that takes place constantly.

20 THE COURT: Ernest Olsen, do you have anything
21 further to say before the Court imposes sentence on
22 you?

23 THE DEFENDANT: No, I don't have anything.

24 THE COURT: Mr. Katcher?

25 MR. KATCHER: If your Honor will please, your

DEFENDANT

ERNEST OLSEN

JUL 15 1975

DOCKET NO.

74 CR6827

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH	DAY	YEAR
7	11	1975

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

Irving Ketcher, Esq.

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that
there is a factual basis for the plea,☐ NOLO CONTENDERE,☐ NOT GUILTY

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged☒ GUILTY, as Charged in Counts 1, 2 and 3FINDING &
JUDGMENT

Defendant has been convicted as charged of the offense(s) of violating T-21, U.S.C. Sec. 173, 174 and T-18, U.S.C. Sec. 2, in that on or about and between January 1, 1969 and June 30, 1970, both dates being approximate and inclusive, and on or about January, 1970, the defendant with others, wilfully, knowingly, unlawfully, did combine, conspire, confederate and agree to violate T-21, U.S.C. Sec. 173, 174, and the defendant fraudulently and knowingly did import and bring into the U.S. quantities of heroin and opium, narcotic drugs, contrary to law.

Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of 5 years on each of counts 1, 2, and 3. Said terms to run concurrently.

SENTENCE
OR
PROBATION
ORDERSPECIAL
CONDITIONS
OF
PROBATION

ONLY COPY AVAILABLE

A75

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- vs -

ERNST OLSEN

FILED
JUL 11 1975
U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
NOTICE OF APPEAL
File No: 74 CR 627
12:00 P.M.

Notice is hereby given that the defendant

ERNST OLSEN

hereby appeals in forma pauperis

to the United States Court of Appeals for the Second Circuit
from the final Judgment entered in this proceeding on the
11th day of July 1975

Dated: Brooklyn, New York

July 11, 1975

By Direction of the Court

LEWIS ORGEL, CLERK
U.S. District Court
Eastern District of New York
on behalf of the defendant

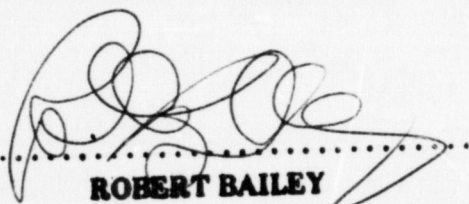
STATE OF NEW YORK)
 : SS.
COUNTY OF RICHMOND)

ROBERT BAILEY, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 7 day of Sept, 1975 deponent served the within Bif upon USA Attorney

attorney(s) for Appellee

in this action, at 225 Cadman Plaza E.
Brooklyn, NY

the address(es) designated by said attorney(s) for that purpose by depositing 3 true copies of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.


ROBERT BAILEY

Sworn to before me, this
day of Sept, 1975.
William Bailey
WILLIAM BAILEY
Notary Public, State of New York
No. 43-0132945
Qualified in Richmond County
Commission Expires March 30, 1976